Sentle Trucking Corporation *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Steel Haulers' Local Union No. 800. Case 6-CA-12501

March 2, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On February 20, 1981, Administrative Law Judge Donald R. Holley issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Sentle Trucking Corporation, Armagh, Pennsylvania, its officers, agents, successsors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge: Upon an original charge filed on June 27, 1979, amended on July 15 and October 5, the Regional Director for Region 6 of the National Labor Relations Board (herein called the Board) issued a complaint on October 31[1] which alleges that Sentle Trucking Corporation (herein called Respondent) violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended (herein called the Act), by, *inter alia*, bypassing International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Steel Haulers' Local Union No. 800 (herein called the Union or Local 800), and dealing directly with employees, canceling trailer leases with owner-operators and fleet owners, and unlawfully terminating the employment of 12 named truckdrivers. In its several answers to the complaint, Respondent denies that it engaged in the unfair labor practices alleged in the complaint.

This case was heard before me in Pittsburgh, Pennsylvania, on May 19 and 20, 1980. All parties appeared and were afforded the opportunity to participate in the hearing. Thereafter, the General Counsel and Respondent filed briefs which have been carefully considered.

Upon the entire record, the briefs, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, an Ohio corporation, is a common carrier engaged in intrastate and interstate transportation of freight and steel commodities. It maintains some nine terminals in several States, including a facility at Armagh, Pennsylvania. The Armagh terminal[2] is the only facility immediately involved in the instant case. During the 12-month period ending October 1, 1979, it derived gross income exceeding $50,000 for the transportation of freight and steel commodities from Pennsylvania locations to points located outside said State. It is admitted, and I find, that Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Steel Haulers' Local Union No. 800, is a labor organization within the meaning of the Act.

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[1] The Administrative Law Judge found that fleet driver Phillipi testified that "at an unstated time" he called Respondent's terminal manager to inquire into the possibility of "bumping" onto equipment owned by Respondent. However, the General Counsel correctly points out that Phillipi testified that he called Respondent on July 16, 1979. This inadvertent error is insufficient to affect the Administrative Law Judge's conclusion that Phillipi was not discriminatorily discharged.

[2] In the absence of exceptions thereto, we adopt, *pro forma*, the Administrative Law Judge's conclusions that Respondent violated Sec. 8(a)(5) and (1) of the Act by sending a letter to employees on June 18, 1979, in which it solicited their approval of a proposed modification of the contract, based on his finding that the employees were not advised by the letter or otherwise that Respondent merely sought to initiate the contractual relief procedure; and that Respondent did not violate Sec. 8(a)(5) and (1) of the Act by holding a meeting on July 14, 1979, at which Respondent offered to seek contractual relief if employees would agree to the modifications proposed in its June 18, 1979, letter and discussed the options available to drivers, based on his finding that a representative of the local union was present during the meeting.

In adopting the Administrative Law Judge's conclusion that Respondent did not violate Sec. 8(a)(5) and (1) of the Act by canceling trailer leases without first bargaining with the employees' collective-bargaining representative, we find it unnecessary to pass on his discussion of the Supreme Court's opinion in *Local 24, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, et al.* v. *Oliver*, 358 U.S. 283 (1959). We note that the National Master Freight Agreement (NMFA) itself recognizes and provides for the use and termination of equipment leases with a 30-day cancellation clause and we find no circumstances here showing that Respondent's termination of the leases was in any manner in derogation of its right to cancel such leases under the NMFA. See *DeBolt Transfer Company*, 259 NLRB 889 (1982).

[1] All dates herein are in 1979, unless otherwise indicated.

[2] On occasion, the Armagh terminal is called the Johnstown terminal in the record.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Respondent is engaged primarily in the transportation of steel at its nine terminals located in the eastern and central portions of the United States.

In June 1979, Respondent utilized some 25 drivers at the Armagh terminal. Among these were company drivers, who operated company-owned tractors and trailers; owner-operators, who drove their own equipment which had been leased to Respondent; and fleet drivers, who drove equipment owned by others who had leased their equipment to Respondent.

Local 800 has represented Respondent's Armagh terminal truckdrivers since 1972. From that time to the present date, Respondent has been a member of the National Steel Carriers Association which has negotiated a series of contracts with the Union. The most recent agreement entitled the National Master Freight Agreement and Eastern Conference Area Iron & Steel Rider (herein called NMFA) was entered on April 1, 1979, and expires on March 31, 1982.

When the current NMFA was executed, Respondent utilized about 12 leased tractors and trailers at the Armagh terminal. Its practice prior to that time had been to cause the owner-operators and fleet operators to haul steel for Respondent on outgoing trips and permit them to trip lease and haul grain on their backhauls.[3] The lessors did not share the revenues they obtained for backhauling grain with Respondent. Thus, Respondent, in effect, used the lessors' equipment only on outgoing trips.[4] While Respondent was able to use leased equipment profitably before the current NMFA was executed, it could not use it profitably after April 1, 1979.[5]

During their testimony, Jesse Sentle, Jr., Respondent's president, and Richard Evans, Respondent's eastern division manager, indicated that Respondent had two alternatives which it could pursue to alleviate the economic problem caused by use of leased equipment after the current NMFA was executed. The first was to promulgate a plan affording economic relief from the collective-bargaining agreement which would thereafter be submitted to the appropriate competitive review board pursuant to the terms of the NMFA. Witness James Hutchinson, Jr., the employer co-secretary of the Eastern Conference Joint Area Committee, credibly indicated that the procedure followed for economic relief from the NMFA is one wherein the particular carrier seeking relief discusses its proposal with the local union and the company's employees and thereafter files a request for relief with itself or the union co-secretary, and the case is then docketed for a hearing before a competitive review board composed of an equal number of employer and union members who decide whether the relief should be granted or denied. The second alternative available to Respondent was to cancel its equipment lease with owner-operators and fleet owners and operate with company equipment.

While the Union represents employees rather than owner-operators and fleet owners in their capacity as equipment owners or lessors, the current NMFA contains provision for minimum equipment rental. Thus, owners leasing tractors are, by the terms of the agreement, entitled to a minimum rental for tractors of 33 percent of the gross revenue produced for the lessee and the minimum trailer rental fee is 13 percent of gross revenue produced. The agreement provides that the driver is to be paid:[6] 26 percent of gross revenue as wages; 3 percent to cover vacation, holidays, sick pay, and funeral leave; $141.60 per month to the Union's health and welfare fund;[7] and $1.02 per hour for straight time worked to a maximum of 40 hours to the Union's pension fund.[8]

Sentle testified that he decided in June to attempt to obtain economic relief from the NMFA through the competitive review board procedure. Consequently, on June 18 he sent correspondence to all owner-operators and fleet owners utilized at each of Respondent's nine terminals. The correspondence was placed in the record as General Counsel's Exhibit 4 and states, in pertinent part:

> DEAR OWNER/OPERATOR AND/OR FLEET OWNER:
>
> We are entering our second month of the new contract, and we find that economically there is no way we can exist unless some relief is granted. We have thought of cancelling leases, but we feel a productivity formula will better serve you and me.
>
> Effective July 1, 1979, Sentle will pay the $74.50 Health, Welfare and Pension Premium if your weekly gross is $2,200.00 or greater. If you gross $1,500.00 or less, you will pay the $74.50. Any figure between $1,500.00 and $2,200.00 we will both share this cost proportionately. We will deduct your share from your truck check.
>
> If you have any questions concerning this matter, please contact your terminal manager. I hope you will all agree to this method so that we can protect everyone's job, and the company can continue to exist.
>
> Thank you,
> SENTLE TRUCKING CORPORATION
> Jesse W. Sentle, Jr.
> President
>
> —I agree with the above deduction
>
> —I do not agree
>
> Signature

[3] While trip leasing, the owner-operator and/or fleet owner operates as an independent contractor.

[4] One owner-operator hauled both ways for Respondent and another, who is not involved in this proceeding, leased dump equipment to Respondent.

[5] See Resp. Exhs. 1(a) and (b) which reveal that Respondent operated at a loss when using both leased tractors and trailers after April 1, 1979.

[6] See G.C. Exh. 2, arts. 53, 55, 56, 59, and 60, and supplemental agreement attached to the NMFA.

[7] Eligibility requirements are set forth in art. 49 of the supplemental agreement attached to the NMFA in the record as G.C. Exh. 2.

[8] *Ibid.*, art. 50.

> Please complete and return to your terminal immediately.

Sentle claimed Respondent's normal practice is to send all notices to employees, including the company newspaper, to all local unions involved, and Evans testified that a copy of the June 18 correspondence was sent to Robert Todd, then the business agent of Local 800. Todd denied that he received such correspondence from Respondent.[9] Evans admitted he did not contact Local 800 before the letter which he describes as a questionnaire was sent to the drivers. According to Evans, only two drivers responded to the June 18 letter and their responses were negative.

On June 27, Todd filed the original charge in this case and on the same day he informed Evans he had filed charges because he felt Respondent was bypassing the Union and dealing directly with employees. Evans informed Todd that Respondent considered the correspondence to be a questionnaire.

The General Counsel placed in the record as General Counsel's Exhibits 3(a)–(i) nine equipment leases executed on various dates by Respondent and the owner-operators and fleet owners whose leased equipment was used at the Armagh terminal. Each of the leases provide, *inter alia*, ". . . Either party shall have the right to terminate this lease at any time after thirty days from the effective date hereof by mailing or delivering to the other party . . . two copies of a written notice of termination." By letters dated July 11, Respondent notified the owners of leased equipment it was then using at each of its nine terminals that it was terminating their trailer leases effective July 17, 1979, at 8 a.m.[10] The letters sent to owners of leased equipment used at the Armagh terminal stated, in pertinent part:[11]

> Effective July 17, 1979, at 8:00 a.m., we find it necessary to cancel your trailer lease.
>
> We have company trailers available at 13% of the gross according to contract. If you are loaded on July 17, deliver your load and load back to your home terminal. Company trailers are available at Toledo, Ohio. Please see Jerry Kish.
>
> We are sorry to take this action but, due to the prohibitive cost of the new contract, we find this action necessary.
>
> Thank you,
> SENTLE TRUCKING CORPORATION
> [s] Jesse W. Sentle
> Jesse W. Sentle, Jr.
> President
>
> JWS/shp
>
> PS: There is a meeting at the Johnstown Terminal July 14, 1979, at 10:00 a.m. to discuss this problem.

Evans testified that Respondent made no attempt to contact Local 800 before sending its lease termination letters, but claimed he sent the Union a copy of a termination letter. Todd denied having received such a letter from Respondent, but indicated he learned of the situation through discussion with an owner-operator.

On July 14, a meeting was held with the drivers at the Armagh terminal. Respondent was represented by Evans and Terminal Manager Harry McLaughlin. Todd represented the 9 or 10 drivers who attended. Prior to the meeting, Todd informed Evans and McLaughlin that there was no way the drivers would agree to pay their health and welfare coverage. Evans started the discussion at the meeting by indicating the Company could not afford the new contract and stated it had to get relief. He informed the drivers Respondent could no longer afford to let owner-operators and fleet drivers haul only one way, but that Respondent could continue to use them if they hauled both ways for the Company and used a company trailer. As an alternative, he indicated the drivers might consider bumping onto company equipment, or continue to haul for Respondent on a trip lease basis. At some point, Evans indicated the drivers could make a proposal in the presence of their business agent if they desired to, and the Company would submit any such proposal to the competitive review board and ask for relief.[12] Todd indicated there would be no deals as the newly negotiated contract was a good one, and he informed the drivers that the Union could not agree to any deals because that would lead to all drivers paying for their health and welfare coverage. Several drivers commented they would like to bump onto company equipment and tear it up. Evans informed those drivers the Company did not want them anyway. At the conclusion of the meeting, one of the owner-operators commented they would probably have to seek employment elsewhere, and after the meeting ended Arnold Hearn, Delmont Hearn, Jack Leckey, Guy Diehl, and Todd went across the street to Jones Motor Freight to seek work. Evans observed the group when they went to Jones.

Evans' uncontradicted testimony reveals that Respondent utilized some 35 tractors and trailers of owner-operators and/or fleet owners on July 14 throughout its system. It then had some 40 company trailers which were available in event such lessors decided to pull company trailers. While two owner-operators working in terminals other than the Armagh terminal chose to continue to haul for Respondent using their own tractors and a company trailer after July 14, none of the owner-operators or fleet owners based at the Armagh terminal indicated a desire to pull a company trailer with their tractor

[9] I make no credibility resolution regarding this issue as Evans did not testify that he personally mailed the letter to Todd. I note, however, that Todd indicated in his pretrial statement given to the investigating agent that he received a copy of the letter at or about the same time the owner-operators received theirs.

[10] Armagh owner-operator Koloshinsky was not sent a lease termination letter as he leased a dump trailer to Respondent and was in a different division (bulk division).

[11] See G.C. Exh. 5.

[12] Todd denied that Evans mentioned going to the competitive review board during the meeting and he claimed several drivers said they would pull company trailers but Evans told them the Company did not want them. I found Evans to be a straightforward witness and credit his testimony. Todd was not an impressive witness, and I gained the impression that he described only that part of the meeting which was favorable to the Union's case.

after July 14. While General Counsel alleges in the complaint that the Armagh drivers ". . . ceased work concertedly and engaged in a strike . . ." from July 17 forward, the record merely reveals that the owner-operators and fleet owners refrained from offering to use company trailers after July 17. Neither the owners nor their drivers engaged in picketing or similar activity which would normally be expected in a strike situation. Respondent admittedly refused to dispatch any owner-operators or equipment owned by fleet owners after 8 a.m. on July 17 unless the owner agreed to pull a company trailer.

On July 20, Respondent terminated all owner-operators and fleet owners by identical letters, the body of which stated (G.C. Exh. 6):[13]

> You have not reported for duty for seventy-two (72) hours. Accordingly, we are considering you a Voluntary Quit and dropping you from the Seniority Rolls of Sentle Trucking Corporation effective this date.
>
> Please send to Toledo or your local terminal Sentle permits, cancelled leases, etc.

While Evans testified that the Armagh terminal drivers of fleet equipment were not sent termination letters on July 20, the record reveals that Gene Nicholson, who drove equipment owned by Delmont Hearns, did receive a termination letter.[14] Nicholson was last dispatched on July 16 and testified that he returned to the Pennsylvania area on July 19. The record fails to indicate whether Nicholson ever contacted Respondent after he was dispatched on July 16. Hearn, the owner of the equipment he drove, never indicated he intended to pull a company trailer.

Fleet driver Phillippi, who also drove equipment owned by Delmont Hearn, testified he asked Terminal Manager McLaughlin at an unstated time about bumping onto company equipment. McLaughlin replied that he did not know for sure; that he would have to check on it.[15] Subsequently, later in July, Phillippi purchased his own tractor and offered to haul for the Company with a company trailer. Evans' uncontradicted testimony reveals that Conrad and Slovak were hired as Company drivers around the end of August or in early September.[16]

On July 21, seven of the eight owner-operators who were terminated by Respondent on July 20, one owner of fleet equipment, and a person whose signature is not legible, filed a grievance protesting the termination of their employment.[17] The grievance was not resolved at the first step of the grievance procedure and it was docketed for consideration by the Western Pennsylvania Joint Area Grievance Committee. On September 6, that committee refused to consider the grievance because the persons involved had not grieved individually. Witness Hutchinson, secretary of the committee in question, was unable to state whether the committee would have considered grievances had the individuals filed separately after September 6. In any event, no individual grievances were filed after September 6.

IV. ANALYSIS AND CONCLUSIONS

A. *Threshold Issues*

Respondent's claim that the Board's decision in *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971), justifies dismissal of this case and deferral to the mandatory grievance procedure set forth in the NMFA, and the General Counsel's claim that trailer leasing had become a term or condition of employment of Respondent's owner-operators by July 1979, pose two threshold issues which should be resolved before the remaining issues raised by the pleadings are addressed.

1. The *Collyer* issue

In *Collyer Insulated Wire, supra*, and subsequent cases, the Board has deferred to the grievance-arbitration procedure of the litigants' collective-bargaining agreements in instances wherein the dispute involved is essentially one concerning the terms or meaning of such agreement. On the other hand, its policy is to not defer in cases where the pleadings allege that employees suffered discriminatory treatment because they attempted to exercise rights guaranteed by Section 7 of the Act. *General American Transportation Corporation*, 228 NLRB 808 (1977), and *United States Postal Service*, 237 NLRB 117 (1978). Moreover, once it has decided to assert jurisdiction, the Board resolves all the issues in a given case. *Meharry Medical College*, 236 NLRB 1396 (1978).

Applying the foregoing to the instant case, I find that deferral would be inappropriate in this case as the complaint alleges, *inter alia*, that 12-named employees were discharged because they engaged in an unfair labor practice strike and/or other protected concerted activity for their mutual aid or protection.

2. The lease issue

Citing *Local 24, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-*

[13] The drivers named as alleged discriminatees in the complaint are:

OWNER-OPERATORS
Guy Diehl
Charles Feathers
Arnold Hearn
Delmont Hearn (also fleet owner)
Larry Heard
John Leckey
James Shaw
Robert Steele

FLEET DRIVERS
Vincent Conrad
Gene Nicholson
Roger Phillippi
Ronald Slovak

[14] Fleet drivers Vincent Conrad, Roger Phillippi, and Ronald Slovak were not sent termination letters.

[15] The NMFA, art. 43, sec. 5, requires written notice of intent to bump onto company equipment. Although Phillippi had a copy of the contract, he admittedly filed no written request that he be permitted to bump onto company equipment.

[16] The record fails to reveal whether Conrad and Slovak sought, prior to late August or early September, to bump onto company equipment. As their seniority date is their date hired in August or September, I presume they did not follow the applicable contractual bumping procedure.

[17] See Resp. Exh. 3.

CIO, et al. v. *Oliver*, 358 U.S. 283 (1959), the General Counsel contends that I should find Respondent had leased trailers from the owner-operators, involved herein, so long that trailer leasing had become a term or condition of their employment which could not be changed unilaterally. In my view, his reliance on *Oliver* is misplaced. In that case, the Supreme Court held that the parties involved did not violate Ohio antitrust laws by agreeing during contract negotiations that carriers would pay certain minimum rates if they leased tractors or trailers from persons who also drove for them. The Court noted that such rental rates were an appropriate subject for bargaining because the rental rates were intimately connected with the remuneration drivers receive for driving, and carriers could, absent agreement on minimum equipment rental rates, pay their drivers low rental and, in effect, cause them to divert moneys supposedly received for driving to pay the cost of owning and using their equipment. The Court did not purport to find that equipment leasing could become a term or condition of employment.

In certain instances, the Board has found that benefits received by employees over an extended period of time have become terms or conditions of their employment. The theory, however, is that the employee has been rewarded for performing work for the employer and once the particular benefit has been conferred for a sufficient period to cause the employee(s) to come to rely on it as part of his remuneration for performing work, it becomes a term or condition of his employment. No such situation exists in this case as the owner-operators have leased their equipment to Respondent and the lease agreements expressly provide that they can be canceled at will by either party once they have been in effect for 30 days. Moreover, the NMFA requires separate checks for drivers' wages and equipment rental; expressly requires that the minimum 30-day clause be included in leases; and provides that owner-drivers shall have seniority as drivers only.[18]

In sum, it is clear, and I find, that the moneys paid by Respondent to owner-operators for equipment rental were clearly rental moneys rather than remuneration for driving services, and as the leases provided either party could cancel at will after the lease had been in effect for 30 days, the owner-operators were precluded from relying on continued receipt of such rental moneys. I find that the trailer leases in question had not become terms or conditions of the drivers' employment by July 1979.

B. *The Alleged Direct Dealings With Employees*

Paragraph 12 of the complaint, read in conjunction with conclusionary allegations set forth in paragraphs 20 and 22, alleges that Respondent violated Section 8(a)(1) and (5) and independently violated Section 8(a)(1) by:

1. Sending employees the June 18 letter which solicited "employees to agree to accept changes in the health and welfare and pension provisions of the NMFA."

2. Offering by the July 11 letter "to provide equipment to employees under terms and conditions different from the rates of pay, wages, hours of employment and other terms and conditions of employment of said employees."

3. Conducting a meeting on July 14 at which it solicited "employees to agree to Respondent's proposal changes in the health and welfare and pension provisions of the NMFA and to agree to other changes in terms and conditions of employment."

For the reasons set forth below, I conclude that Respondent violated Section 8(a)(1) and (5) as alleged by sending enployees the June 18 letter, but I conclude that its July 11 and July 14 actions were not violative of the Act.

1. The June 18 Letter

As revealed, *supra*, Respondent's president, Sentle, informed employees by letter dated June 18, *inter alia*:

> Effective July 1, 1979, Sentle will pay the $74.50 Health, Welfare and Pension Premium if your weekly gross is $2,200.00 or greater. If you gross $1,500.00 or less, you will pay the $74.50. Any figure between $1,500.00 and $2,200.00 we will both share this cost proportionately. We will deduct your share from your truck check.[19]

The letter requested that recipients indicate their agreement or disagreement with the deduction. It is undisputed that Local 800 which represented the owner-operators and fleet owners who received copies of the letter was not consulted before Respondent sent the letters.

There is a long line of cases which hold that an employer acts in bad faith and violates the Act by dealing directly with employees at a time when they are represented by an exclusive bargaining agent. One of the earliest is *Medo Photo Supply Corporation* v. *N.L.R.B.*, 321 U.S. 678, 684 (1944), where the Supreme Court stated:

> The National Labor Relations Act makes it the duty of the employer to bargain collectively with the chosen representatives of his employees. The obligation being exclusive . . . it exacts "the negative duty to treat with no other."

While Respondent contends that by sending the June 18 letter to owner-operators and fleet owners it was merely following the contractual procedure for obtaining economic relief pursuant to the terms of the NMFA, the letter fails to indicate it was sent for such a purpose and the record otherwise fails to reveal that the recipients were so advised.

In sum, the June 18 letter clearly informed Respondent's owner-operators and fleet owners that Respondent intended to modify the terms of the NMFA effective July 1, 1979, and solicited their approval of the modification. As the Union was not consulted before the letter was sent, it is clear, and I find, that by sending the letter to employees and soliciting their reaction, Respondent dealt individually with employees and bypassed the Union in violation of Section 8(a)(1) and (5) of the Act. While the conduct arguably constituted independent vio-

[18] See G.C. Exh. 2, art. 22, secs. 2 and 6, p. 65, and art. 43, sec. 6, p. 106.

[19] The so-called productivity formula was never effectuated by Respondent.

lation of Section 8(a)(1) of the Act, such a finding would add nothing to the remedy for the violation. Consequently, I refrain from deciding that issue.

2. The July 11 letter

As revealed, *supra*, the July 11 letter which was sent by Respondent to its owner-operators and fleet owners advised them that effective July 17 at 8 a.m. their trailer leases would be canceled. The letter also stated, *inter alia*, "We have company trailers available at 13 % of the gross according to contract." While the General Counsel alleges in the complaint that Respondent was, by inserting the verbage described, offering to provide equipment to employees contrary to the terms of the NMFA, the allegation actually constitutes an exercise in semantics. Thus, the record reveals the situation existing on July 11 was one wherein Respondent was indicating it was canceling the trailer portion of the leases it then had with owner-operators and fleet owners and advising them that it would continue to lease their tractor if they elected to pull a company trailer, but instead of receiving 75 percent of the gross revenue produced they would receive 13 percent less or 62 percent of the gross.

For the reasons set forth, *infra*, I conclude that Respondent did not violate the Act when it notified its owner-operators and fleet owners on July 11 that it was terminating their trailer leases. Consequently, I find that it did not offer by the July 11 letter to provide equipment to employees under terms and conditions which differed from terms and conditions of employment they had previously enjoyed. Accordingly, I recommend that paragraph 12(b) of the complaint be dismissed.

3. The July 14 meeting

As revealed, *supra*, Local 800 Business Representative Todd attended the July 14 meeting held at the Armagh terminal. During the course of that meeting, Evans, in the presence of Todd, indicated to those present that if they agreed to the productivity formula concerning health and welfare and pension payments outlined in the June 18 letter, Respondent would seek economic relief from the contract through the competitive review board. Additionally, Evans indicated the drivers attending the meeting could elect to pull a company trailer, exercise their driver seniority and bump onto company equipment, or trip lease for Respondent. Todd indicated the Union would permit no alteration of the NMFA, and none of the drivers voiced an intention to pursue the other alternatives mentioned by Evans.

In the circumstances described, it is clear, and I find, that the changes in the terms and conditions of employment suggested by Evans at the July 14 meeting were made in the presence of the employees' bargaining representative. Consequently, Evans' conduct cannot be described as an attempt to bypass the Union and deal directly with employees as alleged. I recommend that paragraph 12(c) of the complaint be dismissed.

C. *The Alleged-Unlawful Alteration of Employees' Terms and Conditions of Employment Through Cancellation of Trailer Leases*

Paragraphs 13–15 and 22 of the complaint allege, in sum, that by canceling the trailer leases of the Armagh owner-operators and fleet owners effective July 17, without notice to or bargaining with the Union, Respondent violated Section 8(a)(1) and (5) of the Act. I find the contention is without merit.

The General Counsel argues alternative theories in his brief. The first is that trailer leasing had become a term or condition of employment by July 1979, and Respondent could not alter the past practice unless it followed the contractual procedure for obtaining economic relief from the NMFA. Having found that trailer leasing had not become a term or condition of employment by July 1979, I reject the theory.

The second theory of violation urged is that Respondent canceled the leases of owner-operators and fleet owners in retaliation for their refusal to agree to the productivity formula described in the June 18 letter and reiterated at the July 14 meeting. In his brief (pp. 11 and 12), counsel for the General Counsel claims that Evans' admission during cross-examination that Respondent would have followed the contractual procedure for obtaining economic relief from the NMFA before it canceled the leases of owner-operators and fleet owners if the drivers had agreed to the productivity formula proposed on June 18 and reiterated on July 14, justifies a conclusion that Respondent canceled the leases in retaliation for the drivers' refusal to agree to the productivity formula. Evans' testimony does not lead me to the conclusion urged when it is considered in conjunction with other record facts.

As revealed, *supra*, Respondent utilized the tractors and trailers of approximately 35 owner-operators and fleet owners at its nine terminals when the current NMFA was executed. Sentle credibly testified that Respondent knew immediately that it could not use leased equipment profitably and comply with the terms of the agreement. Computations placed in the record as Respondent's Exhibits 1(a) and (b) support his contention. Respondent had two avenues it could pursue; i.e., cancel the leases of owner-operators and fleet owners or attempt to obtain relief from the contract. It chose the latter course, and Sentle prepared the June 18 letter which was sent to owner-operators and fleet drivers. Significantly, the letter stated at the outset, *inter alia:*

> We are entering our second month of the new contract, and we find that economically there is no way we can exist unless some relief is granted. We have thought of canceling leases, but we feel a productivity formula will better serve you and me.

While I have found that Respondent violated Section 8(a)(1) and (5) of the Act by sending owner-operators and fleet owners the June 18 letter without notifying the Union and bargaining with it over the change in the terms and conditions of employment of employees announced in the letter, it is clear, and I find, that Re-

spondent sought by sending the letter to avoid cancellation of the leases by proposing something it felt would be more palatable to the owner-operators and fleet owners. As previously indicated, the owner-operators and fleet owners rejected Respondent's productivity formula proposal, and by letters dated July 11 their trailer leases were canceled.

According to Evans' testimony, Respondent had 40 company trailers available for owner-operators and fleet owners to pull when it canceled the leases of its 35 lessors at all 9 terminals. It is undisputed that Respondent had paid its lessors 13 percent of gross revenue produced for trailer rental prior to July 11. Thus, by using its own trailers rather than those of lessors, which it apparently did not need, it could obviously save money.

In sum, it is obvious that Respondent had a legitimate economic motive for cancelling the trailer leases of its owner-operators and fleet owners on July 11, 1979. As I view the record facts, Respondent sought to reach a solution to its economic dilemma which would be more acceptable to its lessors than lease cancellation, and canceled the leases after the lessors and their bargaining representative rejected all the alternatives it proposed. In the circumstances, I find that General Counsel has failed to prove that the trailer leases of the Armagh terminal owner-operators and fleet owners were canceled in retaliation for their refusal to agree to accept Respondent's productivity formula. For the reasons stated, I recommend that paragraphs 13–15 and 22 of the complaint is dismissed.

D. *The Alleged Discriminatory Discharges*

Paragraphs 16–19 and 21 of the complaint allege, in effect, that the 12 drivers named in fn. 13 of this decision "ceased work concertedly and engaged in a strike" from July 17, 1979, forward; that the strike was caused by Respondent's unfair labor practices; and that Respondent terminated them on July 20, 1979, because they engaged in a strike or other protected concerted activities, thus violating Section 8(a)(3) of the Act.

While General Counsel has alleged that Respondent's drivers ceased work concertedly and commenced a strike against Respondent on July 17, 1979, the record fails to reveal that such drivers jointly decided to refuse to haul for Respondent further on or before July 17, and it fails to reveal that they congregated in the area of the Armagh terminal with picket signs or otherwise engaged in activities normally associated with a strike. Instead, the record merely reveals that subsequent to the mailing of the July 11, 1979, letter which canceled their trailer leases effective July 17, 1979, at 8 a.m., none of the Armagh owner-operators or fleet owners indicated to Respondent that they: desired to haul for it using their own tractors and a company trailer; desired to exercise their seniority rights as drivers, i.e., bump onto company equipment;[20] or desired to haul for Respondent on a trip lease basis.

As revealed, *supra*, Respondent notified owner-operator drivers Guy Diehl, Charles Feathers, Arnold Hearn, Delmont Hearn (also fleet owner), Larry Hearn, John Leckey, James Shaw, and Robert Steele by letters dated July 20, 1979, that Respondent considered them to have quit their employment and it was terminating them. A similar letter was sent to fleet driver Gene Nicholson. The record fails to reveal that Roger Phillippi, Vincent Conrad, or Ronald Slovak, all fleet drivers, were terminated on July 20, 1979, or at any time thereafter.

As revealed, *supra*, Phillippi testified that he asked Armagh Terminal Manager McLaughlin at an unstated time about bumping onto company equipment. McLaughlin said he would check on it, but he never got back to Phillippi. Subsequently, in late July, Phillippi purchased his own tractor and volunteered to haul for Respondent using a company trailer. Although article 43, section 5 of the NMFA, contains provisions which permit a fleet driver to bump onto company equipment after giving written notice of an intent to bump, the record fails to show that Phillippi, who testified he had a copy of the contract, utilized the procedure.[21]

Although General Counsel has alleged that fleet drivers Roger Phillippi, Vincent Conrad, and Ronald Slovak were discharged by Respondent on July 20, 1979, the record fails to reveal that they were discharged on that date or thereafter. In this regard, the record merely reveals that Conrad and Slovak were hired as company drivers in August or September 1979.

Consideration of the facts summarized above cause me to conclude that the General Counsel has failed to prove that the 12 employees named in the complaint engaged in a concerted work stoppage and/or a strike from July 17, 1979, forward. Instead, I find that the record reveals the owner-operators quit their employment by electing not to haul further for Respondent using company trailers. While it appears that Respondent erroneously sent Nicholson the same type of letter sent to owner-operators on July 20, 1979, the record fails to reveal that Nicholson engaged in a protected concerted work stoppage or a strike as alleged in the complaint, or that he was discharged because he had engaged in such activity. Finally, the record fails to reveal that fleet drivers Conrad, Phillippi, and Slovak were discharged by Respondent on July 20, 1979, as alleged, and it fails to reveal that they engaged in a protected concerted work stoppage or strike from July 17, 1979, forward, as alleged in the complaint.

In sum, for the reasons indicated, I find that General Counsel has failed to prove that the employees named in paragraph 16 of the complaint were discharged by Respondent because they engaged in a strike and/or other concerted activity protected by the Act, and I recommend that paragraphs 16–19 and 21 of the complaint be dismissed.

[20] The NMFA and the supplements thereto do not define the bumping rights of owner-operators in a situation wherein they drive their tractor and a company trailer.

[21] See G.C. Exh. 2, p. 106.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The employees covered in the multiemployer bargaining unit set forth in articles 2 and 3 of the NMFA constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. At all times material herein the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Steel Haulers' Local Union No. 800, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the multiemployer unit described in paragraph 3 above for the purpose of collective-bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.
5. By announcing on June 18, 1979, that it intended to alter provisions of the NMFA without giving notice to or bargaining with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Steel Haulers' Local Union No. 800, and by seeking employee approval of such alterations in the NMFA, Respondent bypassed the Union and dealt directly with employees in violation of Section 8(a)(1) and (5) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
7. The Respondent has not violated the Act in any respects other than those specifically found.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[22]

The Respondent, Sentle Trucking Corporation, Armagh, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Bypassing International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Steel Haulers' Local Union No. 800, and attempting to deal directly with employees in the bargaining unit set forth below by unilaterally announcing an intention to refuse to pay for their health and welfare and pension benefits in accordance with the provisions of the National Motor Freight Agreement and the Eastern Conference Iron & Steel Rider. The unit found to be appropriate for the purposes of collective bargaining is:

> All employees covered in the multiemployer bargaining unit set forth in Articles 2 and 3 of the National Master Freight Agreement and the Eastern Conference Area Iron & Steel Rider.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Bargain, upon request, with Local 800 concerning any proposed changes in the wages, hours, or other terms and conditions of employment of bargaining unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Post at its place of business at the Armagh, Pennsylvania, terminal copies of the attached notice marked "Appendix."[23] Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found.

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[22] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[23] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT bypass International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Steel Haulers' Local Union No. 800 and attempt to deal directly with bargaining unit employees by unilaterally announcing an intention to refuse to pay for their health and welfare and pension benefits in accordance with the provisions of the National Master Freight Agreement and the Eastern Conference Area Iron & Steel Rider.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL bargain, upon request, with the above-named Union concerning any proposed changes in the wages, hours, or other terms or conditions of employment of employees in the bargaining unit set forth below, and reduce to writing and sign any agreement reached as a result of such bargaining. The bargaining unit is:

> All employees covered in the multiemployer bargaining unit set forth in Articles 2 and 3 of the National Master Freight Agreement and the Eastern Conference Area Iron & Steel Rider.

SENTLE TRUCKING CORPORATION